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E6H8MCCS 1 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, 4 12 Cr. 384 (KMW) V. 5 MARK McCORRISON, 6 Defendant. 7 -----x 8 June 17, 2014 11:25 a.m. 9 Before: 10 HON. KIMBA M. WOOD 11 District Judge 12 APPEARANCES 13 PREET BHARARA United States Attorney for the 14 Southern District of New York 15 MICAH SMITH Assistant United States Attorney 16 KREINDLER & KREINDLER 17 Attorneys for Defendant MEGAN W. BENETT 18 19 20 21 22 23 24 25

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1 (Case called)

THE DEPUTY CLERK: Will counsel please state their appearances for the record?

MR. SMITH: Good morning, your Honor. Micah Smith for the government.

THE COURT: Good morning.

MS. BENETT: Good morning. Megan Benett on behalf of Michael McCorrison, who is seated at counsel table to my right.

THE COURT: Good morning.

And good morning, Mr. McCorrison.

THE DEFENDANT: Good morning.

THE COURT: I have just received your letter, which I have just read.

Once I have heard from defense counsel and defendant, I will be asking Mr. Smith about the sentencings of comparably situated defendants in the case so that I can follow 3553 to the letter, and that may take a little time. I don't know if you have those in mind.

MR. SMITH: I have some, your Honor. I can collect all as we are going along.

THE COURT: Thank you.

At this point, I would like to ask Ms. Benett, have you and your client had an adequate opportunity to review the presentence report?

MS. BENETT: We have, your Honor.

THE COURT: Do you have any changes you want me to 1 make? 2 3 MS. BENETT: The only change, which I believe I noted 4 in the sentencing memorandum, was with respect to the section 5 addressing remand should the Court impose an incarceratory 6 sentence. That I believe is the final paragraph on page 25, 7 where the report says that Mr. McCorrison was detained without bail since his arrest, which is incorrect. He is in fact a 8 9 candidate for voluntary surrender. THE COURT: We will strike in the next sentence the 10 word "not." 11 12 MS. BENETT: Thank you, your Honor. 13 THE COURT: That last sentence will read, "He is a 14 candidate for voluntary surrender." 15 MS. BENETT: Thank you. THE COURT: All right. At this point, I would be glad 16 17 to hear anything that you, Ms. Benett, and your client wish to 18 say. 19 MS. BENETT: Thank you, your Honor. 20

At the risk of repeating to some extent what was presented in the sentencing memorandum, I would like to add a little bit of flavor to what we have already discussed with the Court.

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I would start by noting that Mr. McCorrison's father and sister are in the audience today having travelled with him

1 from Connecticut to support him during the sentencing.

THE COURT: We welcome you.

MS. BENETT: I think that is an appropriate segue to talking a little bit about the changes in Mark's life over the course of this case.

As the Court knows from our submission earlier, Mark had a troubled family situation during his earlier years, and without belaboring that, I think it is fair to say that some of what he went through with his mother began to manifest itself in some of the very bad decisions that he was making in the late 2000s, starting around 2008 and 2009. And as you can see from the presentence investigation report, this is sort of the cluster of time when Mark begins to get into real trouble. His mother passes away, his good friend Ed Kennison is killed in a mass shooting at a beer distributor in the Hartford area.

THE COURT: At a what?

MS. BENETT: Ed Kennison.

THE COURT: There was a word I didn't understand.

MS. BENETT: Ed Kennison, who was a very good friend of Mark, was killed in a mass shooting at a beer distributor in the Hartford area, right around the same time that Mark's mother had passed away, and also right around the same time that his long-term girlfriend ended the relationship. It's at that time that Mark returns to some of the gambling that he had done earlier when he was in college, but really sort of loses

himself in it.

As the Court knows from our submission, Mark's mother struggled with alcohol dependence and addiction, and to the extent that some of those predilections are inherited, I think it has manifested itself for Mark in the form of gambling. And he embarks on just an all-absorbing life of these illicit poker games, visits to Foxwoods and Mohegan Sun, and he finds himself, as many compulsive gamblers do, further and further in the hole, and to support his habit he begins committing crimes.

As the Court can see from the presentence investigation report, these are the sorts of crimes that one might expect from a person who is again sort of lost in the miasma of this gambling addiction. He is issuing bad checks. He is taking money from others. In some ways, the most outrageous conduct is in paragraphs 62 through 64, when Mark was working with a disabled adult whose disability check Mark endorsed to himself. And I just would like to note, over the time since that offense was committed, Mark has actually repaid that individual to the full amount. I believe he repaid the victim \$7,213. And I mention that because I think it is an insight into what Mark is capable of moving forward.

So when this case first -- at its inception, Mark came voluntarily from Connecticut, along with his codefendants, voluntarily surrendered and embarked on the prosecution here, I would say without a full appreciation of the seriousness of the

charges and of his situation. And for the first six to eight months Mark was making his court appearances and was responsive, but had not necessarily come to terms with how this case would change his life. In fact, he committed at least one additional offense with his codefendants after initially appearing in magistrate court.

Over the course of two to three months after that, when he had almost an epiphanal understanding that his life had changed permanently and inexorably, he embarked on an effort to cooperate with the government. And I think that's important, not just because it allowed the government to present the 5K1 letter to the Court, but most importantly, it forced Mark to sever the relationship with his codefendants.

And once he did that, everything began to change. He moved in with his sister Tanya, who has opened her home along with her husband, giving him a stable place to live. He continues to work on repairing the relationship with his father, to this day is one of his employers. He came down for several meetings with the government. He frequently would get in touch with me when he had additional information from his codefendants who kept texting him and calling him, and though he knew not to have any contact with them and would not return any of their calls, he assiduously kept in touch with me any time there was any outreach to him, and I communicated that to the government.

I would say that from about six months into this case, Mark became a different person that I had seen from the time of his arrest, and having had conversations with his family members and his employers, he has been a different person over the last 18 months than he was for several, several years before this case began.

He additionally started attending the Gamblers

Anonymous meetings on his own accord. That was not a condition of his pretrial release, but he recognized that the conduct and the compulsion that he had with the gambling was never going to be resolved without some assistance. He sought out that counseling. I have gotten the letter from his sponsor at Gamblers Anonymous and we have exchanged messages, although I have not had a chance to speak with him individually. But I also did talk to his other two employers, Brian Caffrey and Mark Albert, who had nothing but positive things to say about what Mark has done over the last year and a half.

Mark Albert said that his work ethic is not just commendable, but Mark is one of the most driven, committed umpires he has seen in his organization, not just with the paid work, but with the charity organizing that he does. Brian Caffrey says that Mark's attitude, even though he is doing really entry level work, for a young man with a college degree, who had hopes of some day working in law enforcement, a dream that is diminished if not extinguished entirely, to have the

willingness and enthusiasm even to do this work, where he is getting much less money than he was when he was committing misconduct, I think speaks volumes to the potential for rehabilitation that we have here.

He met again, as the Court knows, several times with the government. He would have met more times. In fact, I reached out to the FBI agent on this case in the fall or winter when I was on maternity leave because Mark was eager to continue with these efforts to the extent that he could. There is no question that he has turned a corner, and he is not having anything to do with his codefendants, and he is doing everything he can to stay on a straight and narrow path.

His employment situation now would allow him to continue, if he did not get an incarceratory sentence, he would be able to continue working at these three jobs which allows him to earn money not just to support himself and contribute to the public, but most importantly in this case, to contribute toward the restitution that is owed to the victims of this case. A probationary sentence would also allow him to continue the efforts to repair the relationship with his family and his friends in a much more direct way than might be possible were he to be incarcerated. Most importantly, a probationary sentence would ensure that he is being watched during that period of time, not just by the probation department, but by this Court.

His family, with whom I have spoken extensively about the possible sentencing options in this case, his family has said to me that they will not hesitate to contact probation or me or the Court should he remain in the community and things not continue as they have been continuing. And part of the reason they are here today is so that the Court can see firsthand their commitment to their family member, to their son and their brother, but also their commitment to helping him with the changes that he has already started to make, and helping to make sure that should something go wrong, they will communicate that information to all interested parties.

The codefendants in this case have made certain threats, or some codefendants have made threats to Mark once they pieced together that he was cooperating with the government. Nevertheless, in the face of that, he has continued both to cooperate with the government and to stay out of trouble, and he has resisted their entreaties to return to some of their activities earlier in this case.

THE COURT: What were the threats?

MS. BENETT: I believe it was Timothy McDorman's brother would text Mark and say, we know that you're cooperating. I communicated them to the government. They didn't seem to take a step beyond verbal intimidation, but there were some threats of physical violence, but again, those were not backed up by any actual efforts to approach Mark or

his family members. But there were communications, phone calls, voice mail messages and text messages, about wanting to see Mark and about the possibility of fistfights and that sort of thing. Certainly, in the scheme of those types of threats that cooperating witnesses face in federal prosecutions, I would say it was not the most intimidating, but nevertheless, for a person who has never been in this situation, it could have deterred him and it didn't.

I would say that the best evidence of Mark

McCorrison's potential for rehabilitation is his conduct over

the last 18 months, and we would ask this Court to allow him to

continue with those positive steps and impose a probationary

sentence here.

THE COURT: Thank you.

Mr. McCorrison, there is no requirement for you to say anything, but if you would like to speak, I would be glad to hear you now.

THE DEFENDANT: I just wanted to say that I take full responsibility for what I have done, not only to the victims and the companies, but to my family and to the Court. I have made some horrible decisions, and I am truly sorry for what I have put everybody through.

THE COURT: Thank you.

Would the government like to be heard?

MR. SMITH: Yes, your Honor.

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I won't rehash the information and points we have made in our sentencing letter, although I would be glad to answer any questions about that.

I think the bottom line of the letter is that Mr. McCorrison did provide substantial assistance, that he was prepared to testify had there been a trial in this case for any of the defendants, and he made that clear both himself and through counsel. He was prepared to testify at a Fatico hearing if any of the defendants requested it, which was a distinct possibility at the time, in part because Mr. McCorrison was very helpful in laying out the frequency of trips and how the conspiracy operated, which was part of what the government was able to rely on in coming up with loss numbers, which in this case was difficult because not all of the victim retailers kept good records or were able to connect necessarily losses that were happening at stores to this particular conspiracy, and of course some victim retailers were not cooperative at all. So for a variety of reasons, Mr. McCorrison's assistance was substantial.

As the Court is aware, none of the defendants decided to proceed to trial or to request, at least to date, Fatico hearings. Mr. McCorrison is still available to testify in the very unlikely possibility that there were one in the future, though in light of the way in which these cases have been disposed, that's a fleeting possibility.

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To go straight to the Court's question that was raised earlier, so far, according at least to my records, five other defendants in this case have been sentenced. One defendant's charges were nolle'd as a result of his untimely death, and there are four defendants whose sentencings are still pending.

With respect to the five who have been sentenced, the most severe sentence so far was given to codefendant Timothy McDorman, who was given a 36 month sentence with three years of supervised release. As I think both the government's sentencing letter and even Mr. McDorman's own allocution made clear, Mr. McDorman is a very intelligent individual, and he used his talents to further, unfortunately, this criminal In fact, Mr. McDorman was one of, as I would describe scheme. it, the most heavily involved in the conspiracy, not the most, and the Court has not yet sentenced the individual who is the most heavily involved, who is Gregory Ryan, who is at the top of the indictment. But Mr. McDorman was very heavily involved, and as the government's letter indicates, Mr. McDorman and Mr. Ryan were the ones who recruited Mr. McCorrison into the scheme in the first place.

At first, Mr. McCorrison's participation was limited both in terms of its frequency and in terms of what he actually did. He was the returner, so to speak. Mr. McCorrison is also a very intelligent person, very articulate, has a lot of potential, and some of those same attributes made him quite

good at the task that Mr. Ryan and others had assigned to him. I think the fact that Mr. McCorrison is a very intelligent person also made him aware at a certain point that he was not getting compensated for his talent, so to speak, and so he demanded a larger role, and Mr. Ryan and others provided that role to him. So the number that you see both for the intended and foreseeable losses, and also for the forfeiture number, is largely a result of the fact that Mr. McCorrison was very good at one particular task and that he did that repeatedly.

So I think although if you take the numbers alone Mr. McCorrison might be comparable to Mr. McDorman, I think the actual trajectory of his conduct within the conspiracy, both how he became involved in it, the fact that he did not create this scheme, that he was not one of its originators, and the fact that he essentially demanded fairness among co-conspirators in asking for a larger role, all of those things to me indicate that Mr. McCorrison is not as culpable as Mr. McDorman or as Mr. Ryan.

Mr. Santos is another individual who I think would fall at the very top in terms of culpability. Mr. Santos was given a sentence of 25 months, and Mr. Santos I think was another person who was very substantially involved, and more so than Mr. McCorrison.

Of the remaining defendants, Michael McCaffrey, who was given a sentence of six months, Rodney Scudder and Clifford

Stringer, who were given sentences of time served, those individuals, at least according to the government's information and the evidence that we obtained in our investigation, and the information we have received from cooperating witnesses, were not as involved as Mr. McCorrison, but I think one point is important to make, and that's the scope of Mr. McCorrison's involvement in this conspiracy is known to the government in part because Mr. McCorrison made the right decision and decided to cooperate with this investigation.

So Mr. McCorrison, I think the truthfulness of his proffer sessions with the government is shown not just by the fact that he provided information about his codefendants, but also, importantly, by the fact that he provided accurate and robust disclosures about his own conduct. And going back to a point Ms. Benett made, I do believe wholeheartedly that Mr. McCorrison has made, although he has made some bad decisions in the past, his decision to cooperate indicates, I think both in terms of his willingness to truthfully talk about his own conduct and to disclose the information he knew about others, a clean break from this circle of social acquaintances who led him down the wrong path.

THE COURT: Thank you very much.

I note that on page 21 of the presentence report the amount of restitution is \$200,000. Is there any dispute about that?

MS. BENETT: Your Honor, thank you for mentioning that. I was just looking back to the plea agreement, and maybe Mr. Smith has a better recollection. I don't think that there was an agreed upon restitution amount. I think there was a forfeiture figure of \$200,000.

THE COURT: Page 21 says forfeiture is to be determined by the government.

MR. SMITH: It was our determination, your Honor, that as a matter of obviously some estimating, that that was the appropriate forfeiture and restitution number. As the Court is aware from other sentences in this case, it is the Department of Justice's policy to use forfeiture as essentially a way by which the government takes an interest in the restitution amount.

THE COURT: So you would seek forfeiture in the amount of \$200,000?

MR. SMITH: That's correct. What ordinarily happens is through, I believe, the process called remission, what we do is the forfeiture money we get, we then turn it over to the victims, and it could be used to satisfy restitution. We as an office don't have the ability to say that that will happen, but it generally happens in cases of this sort. We don't double take, so to speak, and I don't expect that to happen here.

THE COURT: And just to finish up on cooperation, does the government move pursuant to 5K1?

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MR. SMITH: 1 Yes, we do, your Honor. 2 Thank you. Granted. THE COURT: 3 MS. BENETT: Thank you, your Honor. I just wanted to 4 mention, with respect to an order of restitution, Mr. 5 McCorrison obviously will be limited somewhat in his future 6 employment, given that he does have a federal felony conviction 7 on his record, and I would ask the Court not to impose an order of restitution that would be impossible for him to satisfy, 8 9 especially understanding that the forfeiture order, if 10 executed, could be used in order to compensate the victims in 11 this case. 12 THE COURT: What do you have in mind as an appropriate 13 schedule? What does your client earn presently? 14 MS. BENETT: We have discussed the possibility of a 15 payment schedule of about \$50 per paycheck, which because he has different jobs, I would say it would amount to about \$200 a 16 17 month. 18 THE COURT: And if his income goes above a certain point, I take it he could afford more? 19 20 MS. BENETT: Yes. 21 THE COURT: What does he now earn? 22 MS. BENETT: Right now he is earning, approximately, 23 pretax about \$2,000 a month. So I think his take home is about 24 14 to \$1500 a month. He is contributing to the household 25

expenses of his sister, and he doesn't have a vehicle now.

is hoping at some point to get one, and then there would be additional vehicle payment costs, but his fixed costs are the housing payments that he makes to his sister, his insurance, and telephone. So those come to somewhere a bit under a thousand dollars a month.

THE COURT: Would an appropriate schedule be \$50 per paycheck now, which you think will come to about 200 a month given that he is earning pretax about 2,000 a month?

MS. BENETT: Yes.

THE COURT: And that when he begins to earn 4,000 a month or more, he could pay \$100 per paycheck?

MS. BENETT: I think that sounds appropriate, your Honor.

THE COURT: All right. Good.

MS. BENETT: Thank you.

THE COURT: I begin, as I must, by calculating the advisory sentencing guideline total offense level. It is 17, as agreed by the parties and shown in the presentence report. And Mr. McCorrison's criminal history category is III. If I were sentencing under the guidelines, I would depart downward in light of his substantial cooperation with the government.

Moving to the 3553 factors, I note everything that counsel and Mr. McCorrison have said, and I count on his father and his sister to do what you tell me they have promised to do, which is bring to probation's attention any resumption of

gambling or illicit activity.

I think it's important to note that he came from a troubled family situation, that his gambling may have had to do with an addictive personality genetically transmitted, and I think it's very important that he has paid already \$7,213 in restitution.

His cooperation, which severed his relationship with his codefendants, is the most important part of my assessment of his character. It appears that he has truly turned a corner. The government, Mr. Smith, made a very strong statement in Mr. McCorrison's support, both in describing the cooperation Mr. McCorrison gave to the government, which included having been prepared to testify against codefendants either at trial or at a Fatico hearing, and to have given very honest, or as the government said, accurate and robust information with respect to his own involvement, which allowed the government to get a fix on the amounts of money taken from each victim, which was difficult because the victims either were not forthcoming or had trouble discerning which of their losses could be attributed to this crime.

So what you did was very important, Mr. McCorrison, and I hope you feel proud of what you have done. Your family does too. You have helped the government in a very important way.

I believe that general deterrence is served by a

non-incarcerative sentence, and I believe that individual deterrence has already been accomplished.

In light of that, please stand, Mr. McCorrison.

I sentence you to time served on all counts. You will be on supervised release for three years on each count with each term to run concurrently with each other.

I impose no fine because any money you have to repay victims will need to go to forfeiture and restitution.

I am required to impose the special assessment of \$300, which I do now.

You may sit while I read you the conditions of supervision.

The standard and mandatory conditions will apply.

In addition -- I am now reading from page 24 of the presentence report -- you must provide your probation officer with access to any requested financial information.

You may not incur new credit charges or open additional lines of credit without the approval of your probation officer unless you are in compliance with the installment payment schedule that I will note in a moment.

You must participate in a mental health program approved by the U.S. probation office.

Do you take prescribed medications?

THE DEFENDANT: No, your Honor.

THE COURT: I think this is designed for a different

type of defendant. I think what they have in mind is your participating in Gamblers Anonymous, if they believe that is necessary, and I will require you to do that if they find it necessary.

You must submit your person, residence, place of business, vehicle or any other premises under your control to a search if your probation officer has reasonable belief that contraband or evidence of a violation of the conditions of release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. You must inform any other residents that the premises may be subject to search pursuant to this condition. You will be supervised by the district of residence.

Does the government have a list of victims and amounts due to them?

MR. SMITH: We do, your Honor. I don't have it with me now, but I will be providing it to chambers.

THE COURT: So long as the clerk's office has it, I can order payments to the clerk's office.

MR. SMITH: Thank you, your Honor.

THE COURT: I am required to impose restitution in the amount of the losses suffered by the victims by virtue of Mr. McCorrison's criminal conduct.

I impose forfeiture in the amount of \$200,000.

Let me ask Mr. Smith, should the \$7,213 be taken from 1 that or is that in connection with a totally separate crime? 2 3 MR. SMITH: I believe it was separate, your Honor, but 4 if I could have just a moment to confer with counsel. 5 MS. BENETT: They were separate. THE COURT: So it should not be subtracted. 6 7 As Mr. Smith mentioned, forfeiture is usually remitted to the victims, and so the amount of restitution that I impose 8 9 will not be in addition to forfeiture, but I do impose 10 restitution in the amount of \$200,000. It will be paid in 11 installments beginning 30 days from the date of judgment. 12 installments shall be as follows: 13 Mr. McCorrison will pay \$50 per paycheck, which is 14 expected to be about \$200 a month as long as he earns pretax 15 \$2,000 a month. When his income reaches \$4,000 a month, he must pay, I think it's reasonable to say, \$400 a month in 16 17 restitution/forfeiture. 18 Is there anything further before I read Mr. McCorrison's appeal rights? 19 20 MR. SMITH: Nothing from the government, your Honor. 21 MS. BENETT: Nothing from us, your Honor. 22 THE COURT: Thank you. 23 Mr. McCorrison, I read every defendant his appeal 24 rights, and I will read yours now.

You can appeal your conviction if you believe that

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your quilty plea is somehow unlawful or involuntary or if there is some other fundamental defect in the proceedings that was not waived by your quilty plea. You also have a statutory right to appeal your sentence under certain circumstances. With few exceptions, any notice of appeal must be filed within 14 days of judgment being entered in your case. If you are not able to pay the cost of an appeal, you may apply for leave to appeal in forma pauperis. If you request, the clerk of the court will prepare and file a notice of appeal on your behalf. I thank both counsel for your very useful submissions in the case and your hard work. Mr. McCorrison, I wish you good luck in the future. THE DEFENDANT: Thank you very, very much.